

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JOSEPH BURNS, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

JOHN R. HARRIS, NEIL H. NGUYEN,
SCOTT K. GINSBURG, XAVIER A.
GUTIERREZ, ADAM KLEIN, CECIL H.
MOORE, STEPHEN E. RECHT, ALEX
MERUELO LIVING TRUST,
MERUELO INVESTMENT PARTNERS
LLC, ALEX MERUELO, SIZMEK, INC.,
SOLOMON HOLDING, LLC, VECTOR
SOLOMON HOLDINGS (CAYMAN), LTD.,
VECTOR CAPITAL IV, LP, VECTOR
CAPITAL IV INTERNATIONAL, LP, and
VECTOR ENTREPRENEUR FUND III, LP,

Defendants.

Civil Action No. 1:16-cv-01073-LY

**STIPULATION AND [PROPOSED] ORDER
CONCERNING PLAINTIFF'S VOLUNTARY
DISMISSAL OF THE ABOVE ACTION**

JURY TRIAL DEMANDED

Plaintiff Joseph Burns ("Plaintiff") and defendants John R. Harris, Neil H. Nguyen, Scott K. Ginsburg, Xavier A. Gutierrez, Adam Klein, Cecil H. Moore, Stephen E. Recht, Sizmek Inc., Solomon Holding, LLC, Vector Solomon Holdings (Cayman), Ltd., Vector Capital IV, LP, Vector Capital IV International, LP, Vector Entrepreneur Fund III, LP, Alex Meruelo Living Trust, Meruelo Investment Partners LLC, and Alex Meruelo ("Defendants" and collectively, with Plaintiff, the "Parties"), by and through their undersigned counsel of record, submit the following stipulation and proposed order.

WHEREAS, on September 15, 2016, Joseph Burns filed a complaint captioned *Burns v. Harris, et al*, 1:16-cv-01073-LY (the "Action"), a purported class action under the Private Securities Litigation Reform Act of 1995 (the "PSLRA") alleging violations of the federal securities laws;

WHEREAS, the PSLRA dictates specialized procedures for the administration of securities class actions (*see* 15 U.S.C. § 78u-4);

WHEREAS, Plaintiff published notice of this action to the purported class on October 4, 2016;

WHEREAS, Plaintiff filed a Motion for Leave to Amend the Case Caption and Complaint on November 28, 2016;

WHEREAS, the Court entered an order granting Plaintiff's Motion to Amend Complaint on November 29, 2016;

WHEREAS, Plaintiff filed an Amended Complaint on November 30, 2016;

WHEREAS, Plaintiff filed a Motion of Joseph Burns to Appoint Lead Plaintiff and Co-Lead Counsel on December 2, 2016;

WHEREAS, on December 19, 2016, the parties entered into a Stipulation regarding filing of the Consolidated Amended Complaint and Motion to Dismiss Briefing Schedule;

WHEREAS, on January 11, 2017, the Court entered an Order regarding filing of the Consolidated Amended Complaint and Motion to Dismiss Briefing Schedule;

WHEREAS, on January 11, 2017, the Court granted Plaintiff's Motion for Appointment as Lead Plaintiff and approval of Co-Lead Counsel;

WHEREAS, on February 27, 2017, (i) Defendants Alex Meruelo Living Trust, Meruelo Investment Partners LLC, and Alex Meruelo; (ii) the Director Defendants; and (iii) Defendants Sizmek, Inc. and the Vector Defendants all filed Motions to Dismiss;

NOW, THEREFORE, the parties hereby agree, subject to the approval of the Court, that:

1. The Action is dismissed, each party to bear his, her or its own fees and costs, and the claims asserted therein are dismissed with prejudice as to the named Plaintiff and without prejudice as to all other members of the putative class and no compensation in any form has

passed directly or indirectly to the Plaintiff or any of Plaintiff's attorneys and no promise to give any such compensation has been made,

2. Because the dismissal is with prejudice as to Plaintiff only, and not on behalf of a putative class, notice of this dismissal is not required.

Dated: March 28, 2017

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Dated: March 28, 2017

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*Attorneys for Alex Meruelo Living Trust,
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Alex Meruelo*

ORDERED this ____ day of March, 2017.

U.S. District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached and foregoing instrument has this the 28th day of March, 2017, been sent by the Court's electronic filing or email to all counsel of record.

/s/ Murtaza F. Sutarwalla
Murtaza Sutarwalla